Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Graphnet, Inc.,	)	
	)	
Complainant,	)	
	)	
v.	)	File No. E-94-41
	)	
AT&T Corp.,	)	
	)	
Defendant.	)	

MEMORANDUM OPINION AND ORDER

Adopted: December 21, 2001 **Released:** January 8, 2002

By the Commission:

I. INTRODUCTION

1. In this Memorandum Opinion and Order, we deny all of the claims asserted in a complaint filed by Graphnet, Inc. ("Graphnet") against AT&T Corp. ("AT&T") pursuant to section 208 of the Communications Act of 1934, as amended ("Act").[1] Specifically, we reject Graphnet's arguments that AT&T unlawfully routed through carriers in other countries telex traffic that AT&T received at its switch in the United States and that ultimately was destined for Graphnet's network.[2] We also reject Graphnet's claim that AT&T violated Commission rules during the course of this proceeding.

2. In addition, we grant one of the counterclaims filed by AT&T against Graphnet. In particular, we find that Graphnet's Tariff F.C.C. No. 5 involved an unjust and unreasonable practice in contravention of section 201(b) of the Act.[3]

[1] 47 U.S.C. § 208.

[2] Telex service is a teleprinter exchange circuit service involving a message originated at a teletypewriter at one location and sent to a teletypewriter at a different location. *ITT World Communications, Inc. v. FCC*, 635 F.2d 32, 35-36 (D.C. Cir. 1980).

[3] 47 U.S.C. § 201(b).

II. BACKGROUND

3. Graphnet and AT&T are providers of domestic and international telex service, also known as "record carriers."[4] In order to provide telex service to their customers, record carriers interconnect their networks. At the times relevant to this dispute, the Record Carrier Competition Act ("RCCA"), codified at former section 222 of the Act, contained a general interconnection standard that required record carriers to make available, upon reasonable request, full interconnection with the facilities of other record carriers that are used primarily to provide record communications service.[5] The RCCA provided that interconnection furnished pursuant to a written agreement must be "upon terms and conditions which are just, fair, and reasonable."[6] This dispute concerns the terms and conditions under which Graphnet made its facilities available to AT&T for the termination of domestic and international telex calls that traversed AT&T's network and were destined for Graphnet's subscribers.

4. In February 1993, Graphnet and AT&T entered into a contract entitled "Interconnection Agreement." The Interconnection Agreement specified the types of trunks that would route telex traffic between the two carriers and established each carrier's telex termination rates: $.45 per minute in whole minute increments for traffic carried by Graphnet and terminated on AT&T's network; and $.78 per minute in whole minute increments for traffic carried by AT&T and terminated on Graphnet's network.[7] The Interconnection Agreement included a June 30, 1993, expiration date, which could be extended by mutual agreement.[8] Although Graphnet wished to continue its contractual relationship with AT&T after June 30, 1993, AT&T opted not to do so, apparently citing its then desire to "revert to the conditions of [Graphnet's] interconnect tariff [Tariff F.C.C. No. 5] and the rules of the FCC."[9]

5. Graphnet's Tariff F.C.C. No. 5, which took effect on March 26, 1992, contained rates that were significantly higher than those of the Interconnection Agreement. Specifically, the tariff charged $3.00 for each minute or fraction thereof for terminating either an interconnected domestic or international telex call. Moreover, the $3.00 charge applied to all calls terminated on Graphnet's network "that have, at any point, utilized the facilities of another United States OCC

[4] Complaint, File No. E-94-41 (filed Feb. 1, 1994) ("Complaint") at 1, ¶ 1; Initial Brief of AT&T Corp., File No. E-94-41 (filed Oct. 2, 1996) ("AT&T's Initial Brief") at iii.

[5] 47 U.S.C. § 222(c)(1)(A)(i). The RCCA was repealed in 1994. *See* Pub. L. No. 103-414, 108 Stat. 4296-97 (Oct. 25, 1994). Nonetheless, the statute applies to this case, which Graphnet instituted on February 1, 1994, because it concerns conduct commencing in July 1993.

[6] 47 U.S.C. § 222(c)(1)(A)(i).

[7] Initial Brief of Graphnet, Inc., File No. E-94-41 (filed Oct. 2, 1996) ("Graphnet's Initial Brief"), Attachment 4 (Interconnection Agreement §§ I, II).

[8] *Id.*, Attachment 4 (Interconnection Agreement § II).

[9] Answer of Graphnet, Inc. to AT&T's Counterclaims, File No. E-94-41 (filed May 18, 1994) ("Answer to Counterclaims") at 8, ¶ 17.

[Other Common Carrier]."[10] In other words, if AT&T handled traffic intended for Graphnet's network, but did not directly interconnect with Graphnet, it nonetheless would be liable to Graphnet for the $3.00 charge. Graphnet's tariffed termination rate was significantly higher than the average rate of other telex carriers, which ranged from approximately $.80 to $.88.[11]

6. Notwithstanding its Tariff F.C.C. No. 5, Graphnet entered into interconnection agreements with other domestic record carriers specifying termination rates that were lower than $3.00 per minute. For example, Graphnet contractually agreed to an $.88 per minute rate for TRT Telecommunications Corp. telex messages that were terminated on Graphnet's network.[12] Similarly, pursuant to a 1992 agreement resolving a rate dispute between Graphnet and MCI International, Inc., Graphnet agreed to a $1.23 per-minute termination rate.[13]

7. AT&T viewed Graphnet's tariffed rate as excessive and chose not to pass traffic directly to Graphnet. Instead, AT&T routed through foreign affiliates, such as Unitel Communications, Inc. ("Unitel"), domestic- and foreign-originated telex traffic that it received at its United States switch destined for Graphnet's network.[14] Thus, instead of delivering traffic directly to Graphnet, AT&T sent the traffic to Unitel in Canada, which then directed the traffic to Graphnet in the United States. Pursuant to this relationship, AT&T paid Unitel its applicable charges, and Unitel paid Graphnet a $.28 per minute termination charge that Unitel and Graphnet had negotiated in an interconnection agreement.[15]

8. Graphnet contends that AT&T's routing practice was "inefficient" and "unnatural," resulted in degraded service, and unlawfully deprived Graphnet of revenue. On February 1, 1994, Graphnet filed a formal complaint against AT&T pursuant to section 208 of the Act. Graphnet's complaint asserts claims for (1) violation of Graphnet's Tariff F.C.C. No. 5 and section 203(c) of the Act; (2) violation of sections 203(a) and (c) and 214(a) of the Act; (3)

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[10] Graphnet's Initial Brief, Attachment 2 (Graphnet's Tariff F.C.C. No. 5 §§ 5.1.1, 5.1.3, and 5.2).

[11] Verified Answer and Counterclaims of American Telephone and Telegraph Company, File No. E-94-41 (filed Apr. 15, 1994) ("Answer") at 15, ¶ 46.

[12] Answer at 15-16, ¶ 47; Answer to Counterclaims at 7, ¶ 16.

[13] Answer at 7, ¶ 26; Answer to Counterclaims at 7, ¶ 16.

[14] Answer at 2, ¶¶ 6-7. Unitel is a Canadian carrier in which AT&T owns a thirty-three percent interest. Graphnet Pleading to Update Record, File No. E-94-41 (filed Jan. 11, 1996) ("Pleading to Update Record") at 5. Graphnet's allegations originally pertained exclusively to the AT&T-Unitel relationship. Complaint at 3, ¶ 6. In subsequent pleadings, Graphnet averred that AT&T also diverted traffic to affiliates in Hong Kong and Europe. Pleading to Update Record at 6-7; Graphnet Opposition to AT&T Motion to Strike, File No. E-94-41 (filed Dec. 18, 1997) at 2. In our view, the pertinent fact (which AT&T does not dispute) is that AT&T routed Graphnet-bound traffic to carriers in other countries, and those carriers routed the traffic back to the United States. The precise identities of the carriers is irrelevant to whether AT&T's routing practice was unlawful.

[15] Complaint at 4, ¶ 8.

violation of the Act and the "antitrust laws";[16] (4) violation of sections 222(b)(1) and (c)(1)(B), 202(a), and 201(b) of the Act; (5) violation of the Commission's International Settlements Policy; and (6) violation of the Commission's "No Third Country Routing Via Canada" Policy.[17] The complaint seeks a cease and desist order, an unspecified amount of damages, and a monetary forfeiture.

9. On April 15, 1994, AT&T answered the complaint, denying the violations alleged by Graphnet and advancing various affirmative defenses. In addition, the answer asserts three counterclaims against Graphnet.[18] First, AT&T alleges that, in violation of section 201(b) of the Act, Graphnet's Tariff F.C.C. No. 5 contained unjust and unreasonable charges, terms, and practices. Second, AT&T claims that Graphnet engaged in unlawful discrimination, in violation of section 202(a) of the Act, by imposing the $3.00 termination charge on AT&T while charging other carriers a different, lower rate for the same service. Finally, AT&T avers that, by charging other carriers a rate that differs from the tariffed rate, Graphnet violated section 203 of the Act. AT&T requests declaratory relief, as well as a cease and desist order.[19]

III. DISCUSSION

A. Graphnet's Claims Are Denied.

1. AT&T Did Not Violate Section 203(c) of the Act.

10. Section 203(c) of the Act requires common carriers to file and publish schedules of their charges and practices, *i.e.*, tariffs.[20] Moreover, section 203 prohibits carriers from deviating from the rates and practices contained in their tariffs.[21]

11. Graphnet argues that AT&T violated Graphnet's Tariff F.C.C. No. 5 by not paying the $3.00 per-minute termination charge contained in that tariff. According to Graphnet, the filed rate doctrine requires compliance with effective tariffs; and AT&T's "admitted circumvention" of Graphnet's tariff, allegedly accomplished by not routing traffic directly to Graphnet, purportedly

[16] Graphnet appears to have withdrawn its antitrust claim. Motion to Dismiss or, Alternatively, to Sever and Defer AT&T's Counterclaims, File No. E-94-41 (filed May 18, 1994) at 5-6, n.2 ("Graphnet's citation of the federal antitrust laws in paragraph 16 of its Complaint was not for the purpose of seeking FCC enforcement of such laws or even FCC consideration of AT&T's anticompetitive activities on their merits under the antitrust laws. The antitrust laws were cited in the Complaint merely for the purpose of enabling the FCC to consider such laws incidentally as one part of the public interest.").

[17] Complaint at 5-9, ¶¶ 11-20.

[18] Our current formal complaint rules prohibit the filing of "cross-complaints," which include counterclaims. 47 C.F.R. § 1.725. The rules that existed in 1994, however, did not.

[19] Answer at 14-19, ¶¶ 44-57.

[20] 47 U.S.C. § 203(c).

[21] *Id.*

constituted a violation of section 203(c) of the Act.[22] In addition, Graphnet avers that AT&T violated its own tariffs by circuitously routing Graphnet's telex calls via Unitel "without adequate notice in writing" to Graphnet.[23]

12. We agree with AT&T that Graphnet has not met its burden of proving a violation of section 203(c). As is evident from the statute's language, the obligations imposed by section 203(c) apply to the carrier that filed the tariff.[24] In this case, that carrier is Graphnet, which seeks to enforce its tariff against AT&T. Section 203(c) simply does not control AT&T's obligations here.[25]

13. Graphnet's claim that AT&T violated two of its own tariffs also is unavailing. As a preliminary matter, neither of the tariffs applied to traffic routed from AT&T to other carriers within the United States.[26] In any event, the tariffs' notice requirements never were triggered. AT&T's tariffs required AT&T to provide "adequate notice in writing" to interconnected carriers if changes to AT&T's facilities or equipment "can reasonably be expected to render any interconnected carrier's facilities incompatible with [AT&T's] communications facilities, or require modification or alteration of an interconnected carrier's facilities, or otherwise materially

[22] Although Graphnet's initial complaint refers to "Sections 203(a)(c)," Complaint at 6, ¶ 14, Graphnet's briefs make clear that the alleged violation concerns section 203(c). *See* Graphnet's Initial Brief at 10-11; Reply Brief of Graphnet, Inc., File No. E-94-41 (filed Oct. 22, 1996) ("Graphnet's Reply Brief") at 7-9.

[23] Graphnet's Initial Brief at 10-11 (citing AT&T's F.C.C. Tariff No. 21, § 2.4.C.; AT&T's F.C.C. Tariff No. 25, § 2.4.C.); Graphnet's Reply Brief at 7-8.

[24] *See* 47 U.S.C. § 203(c) (except as otherwise provided by or under the authority of the Act, no carrier shall (1) engage in communications unless it has filed a tariff; (2) charge an amount different from the amount specified in the tariff; (3) refund any amounts charged under the tariff; or (4) extend any privileges except as specified in the tariff).

[25] In its Answer, AT&T argues that "Graphnet's allegations in Count I must be dismissed because they fail to state a cause of action cognizable under the Commission's complaint proceedings." Answer at 10, ¶ 28 (citing *Illinois Bell Telephone Co. v. AT&T*, 4 FCC Rcd 5268, 5270 (1989) ("*Illinois Bell*")). In *Illinois Bell*, the Commission held, *inter alia*, that a complaint filed by Bell Atlantic Operating Companies ("BOCs") against AT&T, in which the BOCs challenged AT&T's failure to pay tariff rates for Special Access services, "would subvert th[e] design [of sections 206-209 of the Act] and turn the complaint procedures into a collection mechanism for the carriers." *Illinois Bell*, 4 FCC Rcd at 5270. As discussed above, we find Graphnet's effort to enforce its tariff pursuant to section 203(c) of the Act to be unavailing on the merits. Consequently, we do not address the question of whether Graphnet's claim is barred under *Illinois Bell*.

[26] AT&T's Tariff 21 described the service provided as (1) the transmission of inbound international telex calls received from international record carriers in New York and Miami to AT&T's telex subscriber stations; (2) the transmission of outbound international telex calls originated by AT&T's telex subscriber stations to store-and-forward facilities of international record carriers in New York and Miami; and (3) the transmission of inbound and outbound international calls between international record carriers in New York City and Miami and telex stations in Alaska. Tariff 25 provided for the use of the international component of AT&T's international telex service to overseas points. *See* AT&T's Reply Brief, Exhibit A (AT&T's F.C.C. Tariff No. 21, §§ 1.1.1, 1.2; AT&T's F.C.C. Tariff No. 25, §§ 1.1.1, 1.2).

affect the use or performance of an interconnected carrier's facilities ...."[27] Graphnet has failed to demonstrate that AT&T altered its facilities in a way that necessitated changes to, or impaired the operation of, Graphnet's facilities. To be sure, Graphnet has asked the Commission to find that AT&T's routing practice "degrade[d] service" by causing routing delays and subjecting calls to "interruptions and incompletions."[28] However, as discussed below, Graphnet has offered no probative evidence that these problems actually occurred.[29]

14. Graphnet asserts that two pieces of evidence reflect service impairments caused by AT&T's routing practice. First, Graphnet describes a test that it conducted to determine how AT&T would reroute telex calls to Graphnet customers if AT&T's Hong Kong route were compromised. Specifically, Graphnet "temporarily disabl[ed] its Hong Kong circuits" and then transmitted telex calls to itself via AT&T.[30] According to Graphnet, "[n]one of these test calls were transmitted by AT&T, and Graphnet received the symbol 'NA,' meaning not available on its test messages."[31] In its reply brief and accompanying affidavit, AT&T explained that the message Graphnet received stands for "not admitted," which indicates an error in the placement of the calls, not an error in the routing of the calls.[32] Graphnet does not dispute AT&T's explanation, and we have no reason to question its accuracy.

15. Second, Graphnet offers a chart purportedly illustrating its business losses. The chart states that the "record shows that Graphnet lost ... customers, ... some undoubtedly to AT&T, during the period, July-December 1993, as a result of AT&T's practices of circuitously routing U.S. and foreign origin telex calls via Unitel, Canada."[33] But even assuming that the customers identified on the chart opted not to use Graphnet's service, the record contains no facts demonstrating why those individuals left Graphnet, let alone that their leaving had anything to do with service disruptions caused by AT&T. In the absence of such evidence, we cannot conclude that Graphnet's allegedly lost business is attributable to any claimed "degrade[d] service" resulting from AT&T's routing practices.

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[27] Graphnet's Initial Brief, Attachment 3 (AT&T's F.C.C. Tariff No. 21, § 2.4.C; AT&T's F.C.C. Tariff No. 25, § 2.4.C).

[28] Graphnet's Initial Brief at 4.

[29] AT&T contends that, if routing delays occurred, they were minimal (*i.e.*, 10-15 seconds) and transpired before call set-up and billing. Answer at 8, ¶ 27. We do not view this statement as an admission that such delays actually took place. And even if such 10 to15 second delays did occur, we are not prepared to find, on the record of this case, that they "materially" affected the performance of Graphnet's facilities.

[30] Graphnet's Initial Brief at 6 (citing *id.*, Attachment 1 [Letter dated Apr. 11, 1996, to Regina M. Keeney, Chief, Common Carrier Bureau, from Robert E. Conn, counsel for Graphnet, at 2]).

[31] *Id.*

[32] AT&T's Reply Brief at 15-16 and Exhibit C (Affidavit of Sharon Eberhard).

[33] Graphnet's Initial Brief at 4.

2. AT&T Did Not Unreasonably Discriminate Against Graphnet's Customers in Violation of Section 202(a).

16. Section 202(a) makes it unlawful for any common carrier to discriminate unjustly or unreasonably in its provision of like communication service.[34] In resolving a claim that a carrier has discriminated in violation of section 202(a), we employ a three-step inquiry: (1) whether the services at issue are "like"; (2) if the services are "like," whether there are differences in the terms and conditions pursuant to which the services are provided; and (3) if there are differences, whether they are reasonable.[35] When a complainant establishes the first two components, the burden of persuasion shifts to the defendant carrier to justify the discrimination as reasonable.[36]

17. Graphnet contends that AT&T's deliberate routing via non-domestic carriers of telex calls inbound to Graphnet's customers, but not telex calls inbound to AT&T's customers, constituted unreasonable discrimination. According to Graphnet, AT&T has succeeded in a plan unlawfully to induce Graphnet's subscribers to shift their business to AT&T.[37]

18. Because AT&T did not argue to the contrary, we assume, without deciding, that the service AT&T provided to Graphnet's customers (*i.e.*, delivery of telex traffic to those customers) is "like" the service AT&T provided to its own customers, and that there is a disparity in the manner in which AT&T provided the service (*i.e.*, by routing traffic destined for Graphnet's network, but not traffic destined for AT&T's network, through carriers in other countries).[38] Thus, the burden of persuasion shifts to AT&T to justify its routing practice as reasonable.

19. In our view, AT&T has met its burden. By directing traffic through carriers in other countries, AT&T enjoyed a dramatic cost savings (*e.g.*, a $.28 per minute rate for telex calls routed to Graphnet via Unitel versus a $3.00 per minute rate for telex calls routed directly to Graphnet). Savings of this nature constitute a reasonable, economic rationale for treating

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[34] 47 U.S.C. § 202(a).

[35] *See, e.g., MCI Telecommunications Corp. v. FCC*, 917 F.2d 30, 39 (D.C. Cir. 1990).

[36] *See id. See also National Communications Ass'n, Inc. v. AT&T Corp.*, 238 F.3d 124, 129-30 (2nd Cir. 2001); *Implementation of the Telecommunications Act of 1996: Amendment of Rules Governing Procedures to Be Followed When Formal Complaints Are Filed Against Common Carriers*, Report and Order, 12 FCC Rcd 22497, 22615, ¶ 291 & n.782 (1997), *recon. denied*, 16 FCC Rcd 5681 (2001); *PanAmSat Corp. v. Comsat Corp.*, Memorandum Opinion and Order, 12 FCC Rcd 6952, 6965, ¶ 34 n.90 (1997).

[37] Graphnet's Initial Brief at 11; Graphnet's Reply Brief at 12-13.

[38] The parties' arguments regarding discrimination appear to be premised on an assumption of "like" service and disparate treatment. *See* Graphnet's Initial Brief at 11; AT&T's Initial Brief at 8-12; Graphnet's Reply Brief at 9-10; AT&T's Reply Brief at 5-7. We need not decide whether, in fact, the services are "like" or were provided disparately, because, as discussed below, we find that AT&T has met its burden of demonstrating the reasonableness of its routing practice.

Graphnet's customers differently.[39] Because AT&T has proffered a legitimate reason for its disparate treatment of Graphnet's customers, a reason that Graphnet does not dispute, we deny Graphnet's section 202(a) claim.

3. AT&T's Routing Practices Did Not Violate the RCCA.

20. Two subsections of the RCCA – which, as noted above, was repealed after Graphnet filed this case – are at issue. The first, section 222(b)(1), was captioned "Exercise of authorities by Commission" and required the Commission to "promote the development of fully competitive domestic and international markets in the provision of record communications service" and to "forbear from exercising its authority ... as the development of competition among record carriers reduces the degree of regulation necessary to protect the public."[40] The second, subsection 222(c)(1)(B), established rules for the terms and conditions on which a United States record carrier must make available its separate domestic facilities to other international record carriers, and its separate international facilities to other domestic record carriers, for the origination and termination of international traffic.[41]

21. Graphnet argues that section 222 was enacted for the purpose of promoting the development of fully-competitive domestic and international record communications service markets. Graphnet asserts that AT&T's practice of routing traffic to other countries contravened this pro-competitive policy, because the resultant loss of customers deprived Graphnet of revenue it would have used to compete with AT&T.[42]

22. We reject Graphnet's claim. Section 222(b)(1) did not govern the conduct of record carriers. It was a general mandate to the Commission to promote competition in domestic and international telex markets and a directive to forbear from exercising its authority as the need for regulation decreased. Although Graphnet is correct that the subsection expressed a pro-competitive policy, we decline to transform this directive to the Commission into a basis for Graphnet to sue AT&T.

23. Section 222(c)(1)(B) similarly has no bearing on this case. The provisions of the subsection were designed to protect unaffiliated record carriers from discrimination by affiliated domestic and international carriers. Graphnet makes no allegation that AT&T refused to interconnect with Graphnet on the same basis that AT&T interconnected with its affiliated entities.

24. We find neither section 222(b)(1) nor section 222(c)(1)(B) to be pertinent to this case. Accordingly, we deny Graphnet's claim that AT&T's routing practices violated the RCCA.

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[39] Moreover, as discussed above, Graphnet has adduced no persuasive evidence that it has incurred any harm as a result of AT&T's actions.

[40] 47 U.S.C. § 222(b)(1).

[41] 47 U.S.C. § 222(c)(1)(B).

[42] Graphnet's Initial Brief at 11-12; Graphnet's Reply Brief at 10-12.

4. Routing of Domestic Traffic Via a Carrier in Canada Did Not Contravene AT&T's Section 214 Authority.

25. Among other things, section 214(a) of the Act prohibits a carrier from engaging in transmission over any line without first obtaining from the Commission a certificate that such transmission is required by the public convenience and necessity.[43] The statute further forbids a carrier from discontinuing, reducing, or impairing service to a community, or part of a community, without first obtaining from the Commission a certificate that the public convenience and necessity will not be affected adversely.[44]

26. Graphnet argues that, during the relevant period, the Commission required carriers to have "explicit country-by-country and product-by-product Section 214 authority" (*i.e.*, the Commission did not grant "beyond country" authority – also known as "and beyond" authority – by implication), and that AT&T's section 214 authority for the United States did not permit AT&T to transmit telex calls from the United States to Canada, and vice versa.[45] Graphnet further maintains that AT&T violated section 214 by not seeking FCC authority to "reduce or impair" service before unilaterally terminating its connections with Graphnet and routing traffic via Unitel.[46]

27. We conclude that AT&T did not violate section 214(a) when it transmitted foreign-originated, inbound telex traffic that it received at its New Jersey switching center through Canada via Unitel, which then terminated that traffic with Graphnet.[47] While this foreign-originated, inbound telex traffic constituted "foreign communication" within the meaning of the Act,[48] the portion of this communication that AT&T routed through Canada was strictly domestic, contrary to Graphnet's assertion.[49] As the Commission explained in its *Benchmarks Order*, there are three specific network elements (and their related cost components) that are used

[43] 47 U.S.C. § 214(a).

[44] *Id.*

[45] Graphnet's Initial Brief at 12.

[46] Graphnet's Reply Brief at 13-14

[47] Graphnet contends that AT&T unlawfully re-routed domestic telex traffic and foreign-originated, United States-bound international telex traffic. Complaint at 3, ¶ 6. Graphnet does not maintain that traffic originating and terminating in the United States is anything other than domestic communication. *See* Graphnet's Reply Brief at 5-7. Consequently, sections III.A.4 through III.A.6 of this order discuss the appropriate categorization of traffic originating in foreign countries and terminating in the United States, which Graphnet claims constitutes international communication.

[48] *See* 47 U.S.C. § 153(3)(17) (formerly codified at 47 U.S.C. § 153(f) (1994)) ("The term 'foreign communication' or 'foreign transmission' means communication or transmission from or to any place in the United States to or from a foreign country, or between a station in the United States and a mobile station located outside the United States.").

[49] Graphnet's Reply Brief at 5-7.

to provide international switched telephone (or, as here, telex) service: (1) international transmission facilities; (2) international switching facilities; and (3) national extension (domestic transport and termination). The international facility component consists of international transmission facilities, both cable and satellite, including the link to international switching facilities. The international gateway component consists of international switching centers and associated transmission and signaling equipment. The national (*i.e.*, domestic) extension component consists of national exchanges, national transmission, and the local loop facilities used to distribute international service within a country.[50] The service that AT&T procured from Unitel fell within this domestic extension component. The fact that AT&T routed this domestic leg of its international telex traffic, which it received from its foreign carrier correspondents, through a foreign country prior to its termination with Graphnet, does not transform this leg into an international communication. Section 3 of the Act categorizes communication "between points within the United States but through a foreign country" as "interstate communication."[51] Thus, the communications at issue in this case were strictly domestic.

28. At the time of the activity about which Graphnet complains, AT&T was regulated as a dominant carrier in its provision of United States domestic service.[52] Consequently, AT&T's permissible activities were governed by the terms of its section 214 authorizations, as well as the Commission's rules and regulations. Graphnet does not cite any Commission rule or regulation prohibiting AT&T's domestic routing practice, nor does it point to any provision in AT&T's domestic or international authorizations barring AT&T from using its United States-Canada lines for the provision of United States domestic service. Absent any such prohibition, we cannot find that AT&T was engaged in the unauthorized provision of service.[53]

29. Finally, we reject Graphnet's "reduce or impair" analysis. In determining the need for prior authority to discontinue, reduce, or impair service under Section 214(a), the primary focus should be on the end service provided by a carrier to a community or part of a community, *i.e.*, the using public. Thus, in situations where one carrier attempts to invoke Section 214(a) against another carrier, concern should be had for the ultimate impact on the community served rather than on any technical or financial impact on the carrier itself. We find that "service to a community or part of a community" was not discontinued, reduced, or impaired in this instance. We so find because, as discussed above, Graphnet has failed to produce any persuasive evidence

[50] *See International Settlement Rates*, Report and Order, 12 FCC Rcd 19806, 19829-30, ¶ 49 (1997), Report and Order on Reconsideration and Order Lifting Stay, 14 FCC Rcd 9256 (1999), *aff'd sub nom. Cable & Wireless, P.L.C. v. FCC*, 166 F.3d 1224 (D.C. Cir. 1999).

[51] 47 U.S.C. § 153(22) (formerly codified at 47 U.S.C. § 153(e) (1994)). As used in the Act, the term "interstate communication" refers to United States domestic, as opposed to United States international, communication service.

[52] *See Motion of AT&T Corp. to Be Reclassified as a Non-Dominant Carrier*, Order, 11 FCC Rcd 3271 (1995) (reclassifying AT&T as a non-dominant carrier in its provision of domestic, interstate interexchange service).

[53] *See MCI Telecommunications Corp. v. FCC*, 561 F.2d 365, 374 (D.C. Cir. 1977), *cert. denied*, 434 U.S. 1040 (1978) (absent an explicit statement to the contrary, a carrier is free to use its facilities for any lawful purpose upon receiving section 214 authorization).

of service disruptions resulting from AT&T's routing practice.

5. AT&T Did Not Violate the Commission's International Settlements Policy.

30. The Commission's International Settlements Policy ("ISP") requires: (1) the equal division of the accounting rate between a United States carrier and a foreign carrier;[54] (2) nondiscriminatory treatment of United States carriers (*i.e.*, all United States carriers must receive the same accounting rate, with the same effective date); and (3) the proportionate return of inbound traffic.[55] The Commission adopted the ISP to prevent foreign monopoly carriers from playing United States international common carriers against one another, or engaging in "whipsawing," to the disadvantage of United States carriers and United States consumers.[56]

31. Graphnet claims that the ISP was designed to "curb the diversion of U.S. carrier revenues to foreign telecommunications entities."[57] According to Graphnet, AT&T violated the policy by diverting revenue away from Graphnet to foreign carriers such as Unitel. In Graphnet's view, much of the traffic at issue was international, because it originated in other countries and was carried by AT&T from its switching center in New Jersey.[58]

32. We reject Graphnet's claim under the ISP. The fact that much of the traffic that AT&T delivered to Graphnet originated in foreign points is irrelevant. As explained above, the portion of the international communication that AT&T routed via Unitel's facilities in Canada was strictly domestic. Once AT&T received an inbound international telex message at its New Jersey switching center (which was the end of the international leg of the message), its subsequent delivery of the message to Graphnet involved the provision of domestic transport service, notwithstanding AT&T's routing of the traffic through Canada.[59] The ISP addresses only the terms and conditions under which a United States carrier agrees to exchange United States

[54] An accounting rate is the price a United States facilities-based carrier negotiates with a foreign carrier for handling one minute of international telecommunications service. Each carrier's portion of the accounting rate is referred to as the settlement rate. In almost all cases, the settlement rate is equal to one-half of the negotiated accounting rate. *See 1998 Biennial Regulatory Review, Reform of the International Settlements Policy and Associated Filing Requirements*, Report and Order and Order on Reconsideration, 14 FCC Rcd 7963, 7966, ¶ 9 n.8 (1999) ("*ISP Reform Order*").

[55] *Id.* at 7966, ¶ 9.

[56] *See Implementation and Scope of the Uniform Settlements Policy for Parallel International Communications*, Report and Order, 51 Fed. Reg. 4736, 4737, ¶ 3 (1986), *recon.*, 2 FCC Rcd 1118 (1987), *further recon.*, 3 FCC Rcd 1614 (1988).

[57] Graphnet's Initial Brief at 16.

[58] Graphnet's Reply Brief at 16.

[59] *See supra* section III.A.4.

inbound and outbound international traffic with a foreign-authorized carrier.[60] The ISP does not address – and imposes no requirements regarding – the domestic routing of inbound and outbound international traffic between United States-authorized carriers. Thus, the manner in which AT&T delivered inbound international telex traffic from its New Jersey switch to Graphnet, and the cost that AT&T incurred in delivering such traffic to Graphnet, is beyond the ISP's purview.

6. Commission Decisions Requiring the Direct Routing of International Traffic Are Irrelevant to This Case.

33. Graphnet claims that AT&T's routing practices violated two related Commission policies, which Graphnet dubs the "Direct Routes Policy" and the "No Third Country Routing Via Canada Policy."[61] As described by Graphnet, the Direct Routes Policy encouraged carriers to route traffic directly to its destination, and to ensure that several direct routes are available, so that service quality and network reliability will be maintained.[62] Graphnet argues that alleged delays in the routing of Graphnet-bound telex calls and relegation of Graphnet traffic to a "single, tenuous, circuitous route" contravened this policy.[63] According to Graphnet, the No Third Country Routing Via Canada Policy prohibits carriers from routing international traffic through Canada.[64] Graphnet further maintains that AT&T is estopped from arguing in this case that its circuitous Canadian routings were permissible, because AT&T allegedly sought Commission adoption of the No Third Country Routing Via Canada Policy.[65]

34. As AT&T contends,[66] Graphnet's reliance on these policies is misplaced. Like the ISP, these policies pertained to the international transmission and switching of United States

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[60] The ISP, which is codified in section 43.51(e) of the Commission's rules, 47 C.F.R. § 43.51(e), was developed as part of the regulatory tradition in which international telecommunications services were supplied through a bilateral correspondent relationship between national monopoly carriers. *See ISP Reform Order*, 14 FCC Rcd at 7966, ¶ 9 n.8.

[61] Graphnet's Initial Brief at 13-16; Graphnet's Reply Brief at 14-15.

[62] Graphnet's Initial Brief at 13 (citing *Optel Communications, Inc. Application for a License to Land and Operate in the United States a Submarine Cable Extending Between Canada and the United States*, Conditional Cable Landing License, 8 FCC Rcd 2267 (1993) ("*Optel*"); *Implementation and Scope of the Uniform Settlements Policy for Parallel International Communications*, 59 Rad. Reg. 2d (Pike & Fischer) 982, 996 (1986)).

[63] Graphnet's Initial Brief at 13.

[64] Graphnet's Initial Brief at 14-16 (citing *Optel; fONOROLA Corporation Application for Authority under Section 214 of the Communications Act to Resell Facilities of Other Common Carriers to Provide Domestic Carriers Interconnection with Canadian Carriers*, Memorandum Opinion, Order and Certification, 7 FCC Rcd 7312 (1992), *recon.*, 9 FCC Rcd 4066 (1994) ("*fONOROLA*")).

[65] Graphnet's Initial Brief at 14-16; Graphnet's Reply Brief at 15-16.

[66] AT&T's Initial Brief at 23-24.

inbound and outbound international traffic.[67] They did not apply to the domestic routing of United States international traffic. Because the instant case involves only the domestic component of inbound, foreign-originated, telex traffic,[68] these Commission policies have no bearing. Accordingly, we deny Graphnet's claim that AT&T's re-routing practice breached Commission policy.

7. AT&T Did Not Violate the Commission's Rules During the Course of This Proceeding.

35. In its briefs and subsequent submissions, Graphnet maintains that a number of AT&T's actions during this litigation violated the Commission's rules. The alleged transgressions include AT&T's alleged failure (1) to be candid and forthcoming to the Commission regarding AT&T's relationship with, and participation in, Unitel; (2) to file a timely answer to Graphnet's first Supplemental Complaint; (3) to send a company representative to a status conference at the Commission; (4) to pay a filing fee with its counterclaim; and (5) to file an answer to Graphnet's second and third supplemental complaints.[69]

36. We conclude that AT&T did not violate the Commission's rules. First, we agree with AT&T that statements it made in reporting its equity ownership in Unitel are not germane to the case. AT&T ordered service from Unitel pursuant to Unitel's tariff and, therefore, paid the same rates and was subject to the same terms and conditions as other carriers.[70] Accordingly, Graphnet's allegations of a conspiracy between AT&T and Unitel have no force.[71] Second, we credit AT&T's explanation for failing to timely file an answer to the first Supplemental Complaint (*i.e.*, that AT&T was unable to locate a service copy of the pleading),[72] and, therefore, accept AT&T's late-filed answer. Third, although it appears that AT&T failed to pay a filing fee in connection with its 1994 counterclaim, the rules at that time were not clear as to whether a

[67] *See, e.g., fONOROLA*, 7 FCC Rcd at 7316, ¶ 15 ("In order to safeguard against the circumvention of our *International Resale Order*, we find it necessary to adopt a policy with respect to international private live resale between the United States and Canada that prohibits the routing of *U.S.-overseas traffic* through Canada.") (emphasis added).

[68] *See supra* section III.A.4.

[69] Graphnet's Initial Brief at 17-18; Graphnet's Reply Brief at 17-18; Motion for Partial Default Judgment, File No. E-94-41 (filed Jan. 28, 1999) at 5-6. We address the last of these purported violations *infra* section IV.

[70] Contrary to Graphnet's assertion (Graphnet's Reply Brief at 17-18), a subsequent decision by Canadian regulators to move toward detariffing does not establish that AT&T availed itself of unique advantages with respect to Unitel.

[71] Furthermore, Graphnet has produced no evidence that disclosures made by AT&T to the Commission regarding AT&T's relationship with Unitel were intentionally misleading or otherwise inadequate under the Commission's rules.

[72] Motion of AT&T Corp. to Accept Late Filed Answer, File No. E-94-41 (filed Mar. 1, 1996) at 2-3.

defendant filing a counterclaim must pay a fee.[73] We decline Graphnet's invitation to penalize AT&T for violating this requirement. Finally, there was no requirement in 1995 (when the status conference at issue took place) that a company representative (as opposed to outside counsel) attend a status conference, absent a directive from Commission staff.[74] Consequently, AT&T's failure to send a corporate representative to the 1995 status conference is not actionable.

8. There Is No Basis for Graphnet's Section 201(b) Claim.

37. Graphnet asserts a "catch-all" claim that AT&T's alleged violations of the Act and the Commission's rules and policies constitute unjust and unreasonable practices in violation of section 201(b).[75] For the reasons stated above, we find that no such violations occurred and therefore reject Graphnet's section 201(b) claim.

9. Conclusion

38. In sum, we deny all of Graphnet's claims against AT&T. Graphnet has failed to establish that AT&T's decision not to order Graphnet's tariffed service and instead to route calls through affiliates in foreign countries violated any provision of the Act or the Commission's policies. In addition, Graphnet has not proven that AT&T's conduct during this proceeding contravened any Commission rule.

B. AT&T's Section 201(b) Counterclaim Is Granted, Because Graphnet's Tariff Violated the RCCA.

39. As noted above, section 201(b) of the Act requires a common carrier's charges and practices in connection with communication service to be "just and reasonable."[76] AT&T challenges as unjust and unreasonable, *inter alia*, Graphnet's practice of imposing the $3.00 per-minute termination charge contained in Tariff F.C.C. No. 5 on carriers with whom Graphnet does not directly interconnect.[77]

40. To support its claim, AT&T contends that there is no cost justification for the challenged practice.[78] According to AT&T, Graphnet negotiated settlement payments so that they

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[73] *See Implementation of the Telecommunications Act of 1996: Amendment of Rules Governing Procedures to Be Followed When Formal Complaints Are Filed Against Common Carriers*, Notice of Proposed Rulemaking, 11 FCC Rcd 20823, 20856, ¶ 71 (1996).

[74] *See* 47 C.F.R. § 1.733(a) (1995) ("In any complaint proceeding, the Commission may in its discretion direct the attorneys and/or the parties to appear before it for a conference ....").

[75] Section 201(b) states, in pertinent part, that "[a]ll charges, practices, classifications, and regulations for and in connection with ... communication service, shall be just and reasonable, and any such charge, practice, classification, or regulation that is unjust or unreasonable is hereby declared to be unlawful." 47 U.S.C. § 201(b).

[76] 47 U.S.C. § 201(b).

[77] Answer at 16, ¶ 48; AT&T's Initial Brief at 30.

[78] *Id.*

would cover its costs, and Graphnet received such payments from the carriers with whom it directly interconnected (*e.g.*, Unitel).[79] Moreover, AT&T claims that Graphnet's costs for terminating traffic received from Unitel did not differ depending on whether the traffic originated on Unitel's network or on AT&T's network.[80] Thus, when Graphnet received AT&T-originated traffic from Unitel, it purportedly recovered *from Unitel* all of Graphnet's costs for terminating such traffic.[81] Accordingly, AT&T maintains that the practice of recovering an additional fee from any carrier whose network also was used in transmission of a telex message amounts to double recovery and "extort[ing] payments ... when [a carrier] chooses *not* to subscribe to Graphnet's services."[82]

41. Because the RCCA was in effect at the time AT&T filed its counterclaims, we apply the statute in this case.[83] Section 222(c)(2) of the RCCA directed the Commission, insofar as possible, to require interconnection "*based upon the costs of the record communications service*."[84] The Commission has characterized section 222(c)(2) as a "mandate of establishing cost based rates for interconnection."[85] Therefore, to comply with the RCCA, Graphnet's practice of imposing a termination charge on carriers with which it did not interconnect must have had a cost justification.[86]

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[79] *Id. See also* Graphnet's Initial Brief at 7-8, ¶ 12 & Attachment 3 (Unitel/Graphnet Interconnect Settlement).

[80] Answer, Exhibit 1 (Letter dated Dec. 30, 1993, to William F. Caton, Acting Secretary, FCC, from Elaine R. McHale, counsel for AT&T, at 4 n.5).

[81] *Id.*

[82] AT&T's Initial Brief at 30.

[83] AT&T filed its counterclaims on April 15, 1994. The RCCA was not repealed until approximately six months later, on October 25, 1994.

[84] 47 U.S.C. § 222(c)(2) (emphasis added). *See Interconnection Arrangements Between and Among the Domestic and International Record Carriers*, Memorandum Opinion, Order and Request for Further Comments, 93 FCC Rcd 845, 868, ¶ 67 (1983) (section 222(c)(2) "ensure[d] a fair opportunity for new carriers to compete, certainly an opportunity equal to that of a company seeking to enter a typical competitive market").

[85] *Interconnection Arrangements Between and Among the Domestic and International Record Carriers*, Memorandum Opinion and Order on Reconsideration, 2 FCC Rcd 2999, 3006, ¶ 52 (1987) ("*Interconnection Arrangements*"). In *Interconnection Arrangements*, the Commission rejected an argument by record carriers who interconnected with Western Union Telegraph Company ("Western Union") that an interim discount of Western Union's charges was appropriate. Applying section 222(c)(2), the Commission found that the discount could not be justified on the basis of cost and, therefore, was inappropriate.

[86] We recognize that sections 222(b)(1) and 222(c)(2) of the RCCA both contained directives to the Commission, and that we declined to enforce section 222(b)(1) against AT&T. *See supra* section III.A.3. That is because section 222(b)(1) articulated a general, pro-competitive policy that did not implicate a specific aspect of carrier operations. In contrast, section 222(c)(2) instructed the Commission to ensure interconnection based particularly upon cost-based rates. Because section 222(c)(2) articulates a standard to which carriers can be held, we are able to apply it in deciding AT&T's section 201(b) counterclaim.

42. Given the *prima facie* validity of AT&T's arguments,[87] and the RCCA's requirement of cost-based rates, we conclude that, in order to prevail against AT&T's assertions, Graphnet was required to produce some cost justification for its practice of charging non-interconnecting carriers a termination fee.[88] Graphnet has failed utterly to meet this burden of production, offering no substantive cost rationale whatsoever for the challenged practice. Indeed, the only response Graphnet provides is speculation that the cost of terminating calls that are routed through carriers in other countries was "*probably* higher than for direct calls, given the unplanned-for circuit congestion and resulting lost revenues."[89] In our view, this solitary and equivocal representation is inadequate.

43. We reject the other arguments Graphnet posits, none of which is cost-based. Specifically, contrary to Graphnet's assertion, the Commission's decisions not to reject or suspend Graphnet's tariff are not dispositive of the section 201(b) claim.[90] Those decisions merely constitute a determination by the Commission that the challenged tariff is not patently unlawful. They do not preclude AT&T from initiating a section 208 complaint proceeding to determine whether the tariff is in fact lawful.[91] Thus, in a section 208 complaint, the Commission "examine[s] legal, and, where appropriate, policy matters to give full effect to the requirements that a carrier's rates, terms, and conditions are just, reasonable, and not unreasonably discriminatory."[92]

44. We similarly find Graphnet's estoppel defense to be without merit.[93] Section 208

[87] AT&T's arguments regarding Graphnet's pricing of its termination service make sense. Specifically, with respect to any particular inbound call, Graphnet had no way of determining in advance how many carriers would precede it in the handling of the traffic. Graphnet, accordingly, had every incentive to price its termination service such that it would recover its costs of terminating the traffic from the carrier from whom it directly received the traffic and with whom it was directly interconnected.

[88] We emphasize that our focus on costs stems from the mandatory language of section 222(c)(2). We express no opinion as to whether, in any other context, Graphnet would be required to justify the challenged practice on a cost basis.

[89] Graphnet's Reply Brief at 22 (emphasis added).

[90] Graphnet's Initial Brief at 23-25, ¶¶ 46-49 (citing *TRT/FTC Communications, Inc. Revisions to Tariff F.C.C. Nos. 8, 9, and 11; Graphnet, Inc. Revisions to Tariff F.C.C. No. 5*, Order, 5 FCC Rcd 7733 (Comm. Car. Bur. 1990)*; Graphnet, Inc. Revisions to Tariff F.C.C. No. 5*, Order, 6 FCC Rcd 1444 (Comm. Car. Bur. 1991), *review denied, Western Union International, Inc. Revisions to Tariff F.C.C. No. 24; Graphnet, Inc. Revisions to Tariff F.C.C. No. 5 Applications for Review*, Memorandum Opinion and Order, 7 FCC Rcd 3787 (1992)); Graphnet's Reply Brief at 22, ¶ 46.

[91] *Bell Atlantic Telephone Cos. Tariff F.C.C. No. 1 Application for Review*, Memorandum Opinion and Order, 8 FCC Rcd 2732, 2733, ¶ 7 (1993). *See Arizona Grocery Co. v. Atchison T.&S.F. Ry. Co.*, 284 U.S. 378, 384 (1932).

[92] *Policy and Rules Concerning the Interstate, Interexchange Marketplace*, Second Report and Order, 11 FCC Rcd 20730, 20746, ¶ 26 (1996), *recon.*, 12 FCC 15014 (1997), *further recon.*,14 FCC Rcd 6004 (1999).

[93] *See* Graphnet's Initial Brief at 20-23; Graphnet's Reply Brief at 20.

of the Act provides that "any person" may bring a complaint against a common carrier for any violation of the Act.[94] Graphnet cites no authority (and provides no legal analysis) supporting its contention that AT&T's participation in the Interconnection Agreement with Graphnet precludes AT&T subsequently from challenging Graphnet's tariffed termination rate.

45. In sum, applying the RCCA, we conclude that Graphnet has failed to rebut AT&T's *prima facie* showing that charging a non-interconnecting record carrier a termination fee was not a cost-based practice and, therefore, was unreasonable. Because we find a violation of the RCCA, we rule in favor of AT&T on its section 201(b) counterclaim.[95]

C. We Need Not and Do Not Reach AT&T's Remaining Counterclaims.

46. We conclude above that Graphnet's practice of imposing the termination charge on AT&T was unlawful, and, consequently, that Graphnet cannot enforce the tariff against AT&T. Because our conclusion in this regard results in AT&T receiving all the relief it seeks, we need not and do not reach its remaining counterclaims.[96]

IV. MOTIONS

47. Each of the parties has filed a variety of motions in this proceeding, a number of which already have been the subject of oral rulings. We herein rule on the outstanding motions.

48. The following motions are denied as moot: (1) Motion to Dismiss or, Alternatively, to Sever and Defer AT&T's Counterclaims;[97] (2) Motion for Severance and Expedited Adjudication of Liability Phase of Graphnet Complaint Proceeding;[98] (3) Motion of AT&T Corp. for Expedited Consideration.[99] In the interest of a complete record, we grant the following motions: (1) Request of Graphnet for Leave to File Reply to AT&T Opposition;[100] (2)

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[94] 47 U.S.C. § 208.

[95] We do not hold that it would be impossible for Graphnet to justify on a cost basis the practice that AT&T challenges. We merely find that, on this record, Graphnet has not met its evidentiary burden of production.

[96] These include the other aspect of AT&T's counterclaim under section 201(b) (*i.e.*, that the $3.00 per-minute termination rate was itself unjust and unreasonable because it was not cost-based [Answer at 15-16, ¶ 47]); its section 202(a) counterclaim (*i.e.*, that Graphnet's interconnection agreements with other carriers unreasonably contained rates for identical telex service that were significantly less than Graphnet's tariffed rate [Answer at 17-18, ¶ 52]); and its section 203 counterclaim (*i.e.*, that Graphnet failed to file its interconnection agreements with MCI International, Inc. ("MCII") and TRT Telecommunications Corp. ("TRT"), or otherwise to amend its tariffed rate to reflect the rates offered to MCII and TRT [Answer at 19, ¶ 56]).

[97] File No. E-94-41 (filed May 18, 1994).

[98] File No. E-94-41 (filed Mar. 12, 1996).

[99] File No. E-94-41 (filed May 3, 1996).

[100] File No. E-94-41 (filed June 13, 1994).

Graphnet Request for Official Notice;[101] and (3) Motion to Accept Additional Pleading.[102]

49. On three occasions, Graphnet amended its complaint.[103] AT&T maintains that, well after the close of discovery and briefing, these filings improperly sought to introduce new allegations against AT&T, and asserts that the pleadings therefore should be stricken.[104] Although our current formal complaint rules do not allow amendments to complaints,[105] the rules in place when this action was brought did not contain a similar prohibition. We agree with AT&T that the supplemental complaints to some extent broaden the factual allegations pertaining to Graphnet's causes of action. In our view, however, the new averments are sufficiently related to the core claims presented in Graphnet's original Complaint to make striking the supplemental complaints inappropriate. Accordingly, we deny AT&T's motions.

50. We further deny Graphnet's motions for default judgment, which Graphnet filed in response to AT&T's motions to strike.[106] We believe that, in combination with AT&T's original Answer and answer to the Supplemental Complaint, the averments in AT&T's motions to strike adequately addressed Graphnet's allegations.[107]

V. CONCLUSION

51. We conclude that Graphnet has failed to prove its allegations that AT&T violated sections 201(b), 202(a), 203(c), 214(a), 222(b)(1), and 222(c)(1)(B) of the Act; the ISP; the "Direct Routes Policy" and "No Third Country Routing Via Canada Policy"; and the Commission's rules. Consequently, we deny Graphnet's claims against AT&T in their entirety.

52. We further conclude that Graphnet's Tariff F.C.C. No. 5 involves an unjust and unreasonable practice, in violation of section 201(b) of the Act. We therefore grant AT&T's first counterclaim.

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[101] File No. E-94-41 (filed Apr. 1, 1996).

[102] File No. E-94-41 (filed Jan. 8, 1998).

[103] Supplemental Complaint, File No. E-94-41 (filed Nov. 7, 1995); Second Supplemental Complaint, File No. E-94-41 (filed Nov. 6, 1997); Third Supplemental Complaint, File No. E-94-41 (filed Dec. 21, 1998).

[104] Motion to Strike the Second Supplemental Complaint of Graphnet, Inc., File No. E-94-41 (filed Dec. 8, 1997) at 2-3; Motion to Strike the Third Supplemental Complaint of Graphnet, Inc., File No. E-94-41 (filed Jan. 19, 1999) at 3-4.

[105] 47 C.F.R. § 1.727(h).

[106] Graphnet Opposition to AT&T Motion to Strike, File No. E-94-41 (filed Dec. 18, 1997) at 7-11; Motion for Partial Default Judgment, File No. E-94-41 (filed Jan. 26, 1999).

[107] Verified Answer of AT&T Corp. to Supplemental Complaint of Graphnet, Inc., File No. E-94-41 (filed Mar. 1, 1996); Motion to Strike the Second Supplemental Complaint of Graphnet, Inc., File No. E-94-41 (filed Dec. 8, 1997) at 3 n.4; Motion to Strike the Third Supplemental Complaint of Graphnet, Inc., File No. E-94-41 (filed Jan. 19, 1999) at 5 n.1.

VI. ORDERING CLAUSES

53. ACCORDINGLY, IT IS ORDERED, pursuant to sections 1, 4(i), 4(j), 201(b), 202(a), 203(c), 214(a), 222(b)(1), and 222(c)(1)(B) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 201(b), 202(a), 203(c), 214(a), 222(b)(1), and 222(c)(1)(B), that the complaint filed by Graphnet, Inc. against AT&T Corp. IS DENIED in its entirety.

54. IT IS FURTHER ORDERED, pursuant to sections 1, 4(i), 4(j), 201(b), and 222(c)(2) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 201(b), and 222(c)(2), that the First Counterclaim filed by AT&T Corp. against Graphnet, Inc. IS GRANTED IN PART, to the extent specified herein, and otherwise IS DISMISSED WITHOUT PREJUDICE.

55. IT IS FURTHER ORDERED, pursuant to sections 1, 4(i), 4(j), 202(a), and 203(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 202(a), and 203(c), that the Second and Third Counterclaims filed by AT&T Corp. against Graphnet, Inc. ARE DISMISSED WITHOUT PREJUDICE.

56. IT IS FURTHER ORDERED, that the Motion to Dismiss or, Alternatively, to Sever and Defer AT&T's Counterclaims, filed on May 18, 1994; the Motion for Severance and Expedited Adjudication of Liability Phase of Graphnet Complaint Proceeding, filed on March 12, 1996; and the Motion of AT&T Corp. for Expedited Consideration, filed on May 3, 1996, ARE DENIED as moot.

57. IT IS FURTHER ORDERED, that the Request of Graphnet for Leave to File Reply to AT&T Opposition, filed June 13, 1994; the Motion of AT&T Corp. to Accept Late Filed Answer, filed March 1, 1996; the Graphnet Request for Official Notice, filed April 1, 1996; and the Motion to Accept Additional Pleading, filed January 8, 1998, ARE GRANTED.

58. IT IS FURTHER ORDERED, that the Motion to Strike the Second Supplemental Complaint of Graphnet, Inc., filed December 8, 1997; and the Motion to Strike the Third Supplemental Complaint of Graphnet, Inc., filed January 19, 1999, ARE DENIED.

59. IT IS FURTHER ORDERED, that the Graphnet Opposition to AT&T Motion to Strike, filed December 22, 1997; and the Motion for Partial Default Judgment, filed January 26, 1999, ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary